

JOSEPH P. RUSSONIELLO (CSBN 44332)
 United States Attorney
 JOANN M. SWANSON (CSBN 88143)
 Chief, Civil Division
 JENNIFER S WANG (CSBN 233155)
 Assistant United States Attorney

450 Golden Gate Avenue, Box 36055
 San Francisco, California 94102-3495
 Telephone: (415) 436-6967
 FAX: (415) 436-6748
 Email: jennifer.s.wang@usdoj.gov

Attorneys for Defendant

MICHAEL S. MORSE
 MORSE, BOLINGER & ASSOCIATES
 2300 Contra Costa Blvd., Suite 285
 Pleasant Hill, CA 94523
 (925) 671-2200
 (925) 671-0104 (fax)
mike@calsubrolaw.com

Attorney for Plaintiff

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

ALLSTATE INSURANCE COMPANY,)
 Plaintiff,)
 v.)
 UNITED STATES POSTAL SERVICE and)
 DOES ONE THROUGH TEN,)
 Defendants.)

Case No. C08-5449 EMC

**SETTLEMENT AGREEMENT AND
 [PROPOSED] ORDER APPROVING
 SETTLEMENT**

SETTLEMENT AGREEMENT

Plaintiff Allstate Insurance Company and defendant United States of America hereby
 enter into this Settlement Agreement (the "Agreement"), as follows:

1. The parties hereby agree to settle and compromise *Allstate Insurance Company v.*

1 *United States Postal Service*, United States District Court for the Northern District of California
2 Case Number C08-5449 EMC (the "Lawsuit"), under the terms and conditions set forth herein.

3 2. The United States of America agrees to pay plaintiff the sum of Two Thousand
4 Dollars (\$2,000.00) (the "Settlement Amount") in full settlement and satisfaction of any and all
5 claims, demands, rights, and causes of action of whatsoever kind and nature, arising from, and by
6 reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries,
7 damage to property and the consequences thereof, resulting, and to result, from the same subject
8 matter that gave rise to the Lawsuit, including any claims for wrongful death, for which plaintiff
9 or its guardians, heirs, executors, administrators, or assigns, and each of them, now have or may
10 hereafter acquire against the United States of America, its agencies, agents, servants, and
11 employees.

12 3. Plaintiff and its guardians, heirs, executors, administrators, or assigns hereby
13 agree to accept the Settlement Amount in full settlement and satisfaction of any and all claims,
14 demands, rights, or causes of action of whatsoever kind and nature, including any claims for
15 wrongful death, arising from, and by reason of any and all known and unknown, foreseen and
16 unforeseen bodily and personal injuries, damage to property and the consequences thereof which
17 they may have or hereafter acquire against the United States of America, its agencies, agents,
18 servants, and employees on account of the same subject matter that gave rise to the Lawsuit.
19 Plaintiff and its guardians, heirs, executors, administrators, or assigns further agree to reimburse,
20 indemnify, and hold harmless the United States of America, its agencies, agents, servants, and
21 employees from any and all such causes of action, claims, liens, rights, or subrogated or
22 contribution interests incident to or resulting from further litigation or the prosecution of claims
23 by plaintiff or its guardians, heirs, executors, administrators, or assigns against any third party or
24 against the United States of America, including claims for wrongful death. Plaintiff and its
25 guardians, heirs, executors, administrators, and assigns agree to defend and indemnify the United
26 States of America, its agencies, agents, servants, and employees from any and all such causes of
27 action, claims or lawsuits by a party insured by plaintiff asserting a claim or right that is the
28 subject matter of the subrogation claim in the Lawsuit.

1 4. This Agreement shall not constitute an admission of liability or fault on the part of
2 the United States of America, its agencies, agents, servants, or employees, and it is specifically
3 denied that they are liable to the plaintiff. This Agreement is entered into by and between the
4 parties for the purpose of compromising disputed claims and avoiding the expenses and risks of
5 litigation.

6 5. This Agreement may be pled as a full and complete defense to any subsequent
7 action or other proceeding involving any person or party which arises out of the claims released
8 and discharged by this Agreement.

9 6. The Settlement Amount represents the entire amount of the compromise
10 settlement. The parties will each bear their own costs, fees, and expenses, and any attorneys'
11 fees or liens owed by plaintiff will be paid out of the Settlement Amount and not in addition
12 thereto.

13 7. It is also understood by plaintiff that, pursuant to Title 28 , Section 2678 of the
14 United States Code, attorneys' fees for services rendered in connection with this Lawsuit shall
15 not exceed 25 percent of the Settlement Amount.

16 8. Payment of the Settlement Amount will be made by a check drawn on the United
17 States Postal Service and will be made payable to "Allstate Insurance Company."

18 9. In consideration of the payment of the Settlement Amount and this Agreement,
19 plaintiff agrees that it will also execute a Stipulation of Dismissal, which stipulation shall dismiss
20 with prejudice all claims asserted in this Lawsuit. The fully-executed Stipulation of Dismissal
21 will be held by defendant's counsel and will be filed with the Court upon delivery to plaintiff's
22 counsel of the Settlement Amount.

23 10. Plaintiff has been informed that payment of the Settlement Amount may take sixty
24 days or more to process, but defendant agrees to make good faith efforts to expeditiously process
25 the payment.

26 11. The parties agree that should any dispute arise with respect to the implementation
27 of the terms of this Agreement, plaintiff shall not seek to rescind the Agreement and pursue its
28 original causes of action. Plaintiff's sole remedy in such a dispute is an action to enforce the
settlement in the United States District Court. The parties agree that the United States District

1 Court will retain jurisdiction over this matter for purposes of resolving any dispute alleging a
2 breach of this Agreement.

3 12. In consideration of payment of the Settlement Amount and this Agreement,
4 plaintiff hereby releases and forever discharges the United States of America and any and all of
5 its past and present officials, employees, agencies, agents, attorneys, successors, and assigns from
6 any and all obligations, damages, liabilities, actions, causes of action, claims, and demands of
7 any kind and nature whatsoever, whether suspected or unsuspected, at law or in equity, known or
8 unknown, arising out of the allegations set forth in the pleadings in the Lawsuit.

9 13. California Civil Code Section 1542 provides as follows:

10 A general release does not extend to claims which the creditor does
11 not know or suspect to exist in his favor at the time of executing
12 the release, which if known by him must have materially affected
his settlement with the debtor.

13 Plaintiff, having been apprised of such language by its attorney, and fully understanding the
14 same, nevertheless waives the benefits of any and all rights it may have pursuant to Section 1542
15 and any similar provisions of federal law. Plaintiff understands that, if the facts concerning its
16 injuries and the liability of the defendant for damages pertaining thereto are found hereinafter to
17 be other than or different from the facts now believed to be true, this Agreement shall be and
18 remain effective notwithstanding such difference.


19 14. This instrument shall constitute the entire agreement between the parties, and it is
20 expressly understood and agreed that this Agreement has been freely and voluntarily entered into
21 by the parties with the advice of counsel, who have explained the legal effect of this Agreement.
22 The parties further acknowledge that no warranties or representations have been made on any
23 subject other than as set forth in this Agreement. This Agreement may not be altered, modified,
24 amended, or otherwise changed in any respect except by writing, duly executed by all parties and
25 their authorized representatives.

26 15. The persons signing the Agreement warrant and represent that they possess full
27 authority to bind the persons on whose behalf they are signing to the terms of the Agreement.

28 16. It is contemplated that this Agreement may be executed in several counterparts, with
a separate signature page for each party. All such counterparts and signature pages, together,

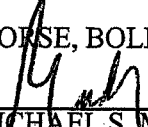
1 shall be deemed to be one document.

2
3 Dated: March 18, 2009


CURTIS HOCOM
ALLSTATE INSURANCE COMPANY
Plaintiff

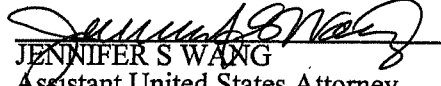
4
5 Dated: Mar, 18, 2009

MORSE, BOLINGER & ASSOCIATES


MICHAEL S. MORSE
Attorneys for Plaintiff

6
7
8 Dated: March 19, 2009

JOSEPH P. RUSSONIELLO
United States Attorney


JENNIFER S. WANG
Assistant United States Attorney
Attorneys for Defendant

13
14 **[PROPOSED] ORDER**

15 The above Settlement Agreement is approved, and it is so ordered.

16
17 Dated: 3/20/09

HON. EDWARD M. CHEN
United States Magistrate Judge

